

IN THE UNITED STATE DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

JOSEPH CARLSON,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Cause No. EP-21-cv-252
	§	
NEW MEXICO STATE UNIVERSITY,	§	
	§	
Defendant.	§	

NEW MEXICO STATE UNIVERSITY’S NOTICE OF REMOVAL

Subject to and without waiving any defenses, and pursuant to sections 1331, 1441, and 1446 of Title 28 of the United States Code, NEW MEXICO STATE UNIVERSITY (“NMSU”) respectfully removes Cause No. 121-00140-CV from the Justice Court, Precinct 1, of El Paso County, Texas to this Court, the United States District Court for the Western District of Texas, El Paso Division.

I. PROCEDURAL BACKGROUND

1. On September 16, 2021, Plaintiff JOSEPH CARLSON (“Plaintiff”) filed his “Petition: Small Claims Case” (“Petition”) against NMSU in the Justice Court, Precinct 1, of El Paso County, Texas, styled *Joseph Carlson v. New Mexico State University*, Cause No. 121-00140-CV. In his Petition, Plaintiff appears to assert¹ a claim against NMSU for violating the Americans with Disabilities Act (“ADA”) based on discrimination “against persons with a disability,” ostensibly “autism,” for requiring students to undergo weekly COVID-19 testing if they are not vaccinated. *See* Ex. 1, Pet. at 1.

¹ Plaintiff is proceeding *pro se*, and therefore, his pleadings are entitled to a liberal construction. *See Johnson v. Atkins*, 999 F.2d 99, 100 (5th Cir. 1993).

2. Plaintiff also appears to assert a violation of Title VI of the Civil Rights Act of 1964 (“Title VI”) or the United States Constitution (ostensibly the First Amendment pursuant to section 1983 of Title 42 of the United States Code) for discrimination by a public education institution based on religious beliefs, also for requiring weekly COVID-19 tests for unvaccinated students. *See id.*

3. NMSU received a copy of the Petition on September 21, 2021. This removal is timely filed within 30 days of receipt of the Petition. *See* 28 U.S.C. § 1446(b). True and correct copies of all process and pleadings NMSU received are attached to this Notice of Removal as Exhibit 1 in compliance with section 1446. *See id.* § 1446(a).

II. REMOVAL BASED ON FEDERAL QUESTION JURISDICTION

4. Pursuant to section 1441, “any civil action brought in a State Court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

5. Section 1331 provides: “The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” *Id.* § 1331.

6. In his Petition, Plaintiff expressly alleges a violation of a law of the United States in asserting an ADA claim: “Violation of ADA; discrimination against persons with a disability.” *See* Pet. at 1.

7. Plaintiff also appears to allege a claim based on a violation of Title VI or section 1983 for discrimination by a public education institution based on religious beliefs: “discrimination based on religious beliefs. NMSU is not following medical science and is discriminating against a class of people based on religion.” *Id.*

8. Because these claims arise under the laws of the United States, namely the ADA, Title VI, and/or section 1983, this Court has original jurisdiction under section 1331, and removal is proper pursuant to section 1441(a).

III. PROPER VENUE AND COMPLIANCE WITH REMOVAL PROCEDURE

9. Pursuant to section 1441(a), venue of the removed action is proper in this Court as the district and division embracing the place where the state action is pending, namely the Justice Court, Precinct 1, of El Paso County, Texas.

10. NMSU will promptly give Plaintiff written notice of the filing of this Notice of Removal as required by section 1446(d).

11. NMSU will also promptly file a copy of this Notice of Removal with the Clerk of the Justice Court, Precinct 1, of El Paso County, Texas, where the action is currently pending, pursuant to section 1446(d).

12. True and correct copies of all process and pleadings NMSU received in the State Court action are attached as Exhibit 1 and are filed with this Notice as required by section 1446(a).

13. Pursuant to section 1446(b), this Notice is filed within thirty (30) days after NMSU's receipt of the Petition setting forth a removable claim.

WHEREFORE, NEW MEXICO STATE UNIVERSITY removes Cause No. 121-00140-CV from the Justice Court, Precinct 1, of El Paso County, Texas to the United States District Court for the Western District of Texas, El Paso Division, on this 13th day of October, 2021.

<Signature page follows.>

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing document was sent by U.S. Regular Mail and via email to the following on this 13th day of October, 2021.

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VALERIE R. AUGER